

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE  
EASTERN GRAND DIVISION

FILED

VALORIE HUGHLEY,

Claimant,

v.

STATE OF TENNESSEE,

Defendant.

Claims Commission No. 20090428  
Regular Docket

MAY 19 2009

Tennessee Claims Commission  
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NOTICE SENT

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ORDER GRANTING STATE'S MOTION TO DISMISS

**THIS MATTER IS BEFORE** the undersigned on the Defendant's Motion to Dismiss and the Record as a whole.

Motions pending before the Tennessee Claims Commission are to be decided without oral argument pursuant to Tennessee Claims Commission Rule 0310-1-1-.01(5)(a) unless otherwise ordered. There has been no order for oral argument in this matter. Further, there has been no motion by either party for oral argument. Therefore, the State's Motion is properly before the Commission and will be heard on the record.

Ms. Hughley's claim is on the Commission's regular docket. This claim was filed on October 10, 2008, and prayed for damages in the amount of one hundred thousand dollars (\$100,000.00). On January 8, 2009, the Division of Claims Administration transferred the claim to the Commission for hearing.

On February 16, 2009, the State of Tennessee filed a Motion to Dismiss pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure on the ground that the claim failed to set forth facts supporting a viable claim against the State of Tennessee. Ms. Hughley has not filed a response to

that Motion. Therefore, the claim is now before the Commission for final disposition.

Ms. Hughley's claim is somewhat difficult to understand and consists of copies of various letters sent to the Division of Claims Administration, a letter sent by her to a company known as Behavioral Health Associates in Chattanooga, Tennessee, the Bristol-Meyers Squibb Patient Assistance Foundation, and the Tennessee Department of Health.

Although persons representing themselves, or pro se Claimants, are given some latitude regarding the format of the claims they file, all Claimants are required by Rule 8 of the Tennessee Rules of Civil Procedure to file pleadings setting forth "a short and plain statement of the claim showing that the pleader is entitled to relief" (Rule 8.01) with "simple, concise and direct" allegations in every pleading (Rule 8.05). The documents filed by Ms. Hughley are difficult to follow. However, as best the Commission can discern, the following summarizes the thrust of her complaints.

Apparently, Ms. Hughley has been treated for paranoid schizophrenia and at one point in time was under the care of a Dr. Kennedy in Chattanooga, Tennessee. However, unfortunately, in 2007, Dr. Kennedy left the private practice of psychiatry because of health-related issues. Dr. Kennedy worked with an organization known as Behavioral Health Associates, a business in which Dr. Lee Solomon, M.D. and his wife, herself a nurse, were also involved.

In September of 2007, Behavioral Health Associates sent Ms. Hughley a letter notifying her that Dr. Kennedy was leaving the private practice of psychiatry and that accordingly, she would need to seek treatment with other healthcare providers. Additionally, Behavioral Health Associates offered to renew prescriptions for medications for a three month period.

Subsequently, Ms. Hughley apparently was seen at Johnson Mental Health Center in Chattanooga, Tennessee, in 2008. It would appear that Johnson Mental Health Center is a community mental health provider in Hamilton County. Ms. Hughley states in one of her letters that she asked an

individual there named Joel for free medications.

Ms. Hughley contends that unspecified rights were violated since she could not get her medications. Additionally, she makes reference in one of her letters regarding a “boss” who had “mess[ed] everone (sic) up that were on TennCare”. The Office of the Attorney General, in its Memorandum supporting the State’s Motion to Dismiss, indicates that Ms. Hughley is not enrolled in TennCare.

In her various filings, Ms. Hughley also requests that the Commission investigate the Bristol Meyers Squibb pharmaceutical company because of side effects which she believes a drug named Abilify may have caused her after she began taking it in 2004.

In one of her letters, Ms. Hughley also complains that Behavioral Health Associates should have seen that all of Dr. Kennedy’s patients were under the care of a doctor after Dr. Kennedy left active practice. The letter sent to Ms. Hughley on September 10, 2007, from Behavior Health lists several different physicians whose offices Ms. Hughley might contact for treatment.

Ms. Hughley asserts in her filings that without treatment and medications, she might suffer a reoccurrence of psychiatric problems which she first developed around 1992.

Finally, Ms. Hughley filed an Allegations Report with the Tennessee Department of Health, Office of Investigations. However, there is nothing in this file indicating the content of that report.

In this case, the State has asked that the claim filed by Ms. Hughley be dismissed pursuant to Rule 12.02(6) for failure to state a claim upon which relief can be granted. Determining whether or not a claim should be dismissed on this ground “...is determined from an examination of the complaint alone”. *Wolcotts Financial Services, Inc. v. McReynolds*, 807 S.W.2d 708, 710 (Tenn. Ct. App. 1990). Dismissal is warranted when, construing the complaint filed by the claimant liberally and taking all allegations therein as true, it “...appears beyond doubt that the plaintiff can prove no set of

facts in support of [her] claim that would entitle [her] to relief". See *Dobbs v. Guenther*, 846 S.W.2d 270, 273 (Tenn. Ct. App. 1992) and *Sullivant v. Americana Homes, Inc.*, 605 S.W.2d 246, 248-249 (Tenn. Ct. App. 1980).

Initially, although it appears to be the case that Ms. Hughley is not enrolled in the TennCare program, if in fact she was, this Commission does not have jurisdiction over a denial of benefits in connection with a TennCare claim. Jurisdiction for those claims is in the Chancery Court pursuant to the Uniform Administrative Procedures Act and not with this Commission. See Tenn. Code Ann. § 71-5-101, *et seq.* and *Crownover v. Wadley*, 2001 WL 47005 (Tenn. Ct. App.).

Certainly, any claim Ms. Hughley may have regarding side effects caused by a drug named Abilify, a product of the Bristol Myers-Squibb pharmaceutical company, is not properly before this Commission. Any such products liability claim would be brought in another court.

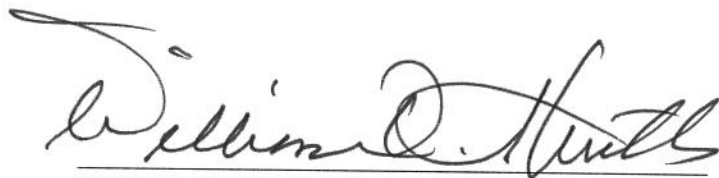
Secondly, Ms. Hughley seems to base her claim on the allegation that when Dr. Kennedy retired from active practice because of medical problems, his former practice groups, Behavioral Health Associates, chose not to continue to treat her and provide her prescriptions past a three month period. However, complaints Ms. Hughley may have regarding the manner in which her treatment at Behavioral Health Associates was handled do not involve an employee of the State of Tennessee and therefore, her complaints in that regard are not proper before this Commission. Tennessee Code Annotated 9-8-307 provides that this Commission has jurisdiction over certain categories of claims based on the acts or omissions of **state employees**. This would be true even though an organization may have been receiving payments from the State of Tennessee. Unless Ms. Hughley's claim is based on the negligence of a state employee, then jurisdiction of her claim before this Commission is not proper. *Conley v. State*, 141 S.W.3d 591, 597 (Tenn. 2004).

The same would be true regarding Ms. Hughley's complaints that the Johnson Mental Health Center would not provide her with free medications. That center is simply not a state facility and its employees are not employees of the State of Tennessee – a requirement for jurisdiction before this Commission.

Based upon these considerations, Ms. Hughley's claim is not proper before this Commission on its face. There is simply no basis found in her filings which would empower this Commission to consider her claims.

This being the case, the State's Motion to Dismiss the claim is **GRANTED**.

**ENTERED** pursuant to **Tenn. R. Civ. P.** 58 on this the 13<sup>th</sup> day of May, 2009.



**William O. Shults, Commissioner**

P.O. Box 960

Newport, TN 37822-0960

**CERTIFICATE OF SERVICE**

I certify that a true and exact copy of the foregoing document has been forwarded to:

**Valorie Hughley**  
**1912 Robbins Street**  
**Chattanooga, TN 37404**

**Heather C. Ross, Esq.**  
**Senior Counsel**  
**Office of the Attorney General**  
**P.O. Box 20207**  
**Nashville, TN 37202-0207**

this the 19 day of May, 2009.



**Marsha Richeson, Administrative Clerk**